

Special Report

The EU system for the certification of sustainable biofuels



EUROPEAN
COURT
OF AUDITORS

EUROPEAN COURT OF AUDITORS
12, rue Alcide De Gasperi
1615 Luxembourg
LUXEMBOURG

Tel. +352 4398-1

Enquiries: eca.europa.eu/en/Pages/ContactForm.aspx

Website: eca.europa.eu

Twitter: @EJAuditorsECA

More information on the European Union is available on the internet (<http://europa.eu>).

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Special Report**The EU system for the certification of sustainable biofuels**

(pursuant to Article 287(4), second subparagraph, TFEU)

The ECA's special reports set out the results of its performance and compliance audits of specific budgetary areas or management topics. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was produced by Audit Chamber I — headed by ECA Member Kersti Kaljulaid — which specialises in preservation and management of natural resources spending areas. The audit was led by ECA Member Jan Kinšt, then taken over by ECA Member Bettina Jakobsen at the final stage of the report, supported by Alejandro Ballester Gallardo, Head of his private office; Bernard Moya, private office Attaché; Davide Lingua, Principal Manager; Krzysztof Zalega, Head of Task; and Paul Toulet-Morlane, Joao Nuno Coelho Dos Santos, Felipe Andres Miguelez, Zoltan Papp and Paivi Piki, Auditors. Secretarial assistance was provided by Murielle Siffert.



From left to right: J. N. Coelho Dos Santos, B. Jakobsen, P. Toulet-Morlane, D. Lingua and A. Ballester Gallardo.

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Reply of the Commission

Biodiesel: An oil-based biofuel typically produced from vegetable fats, such as rapeseed, sunflower seed, soya bean and palm oil, and used as a diesel additive in motor vehicles.

Bioethanol: An alcohol-based biofuel typically produced from starch and sugar crops such as wheat, maize, barley and sugar beet or cane, and used as a petrol additive in motor vehicles.

Biofuel: Any fuel produced from plant- or animal-based feedstock (referred to as 'biomass'). The two most common forms of biofuel are bioethanol and biodiesel.

Biomass: Biomass is organic matter used for the production of biofuels. It is the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste.

CAP: Common agricultural policy of the European Union.

Certificate: Attestation by an independent certification body that an economic operator complies with the sustainability requirements for biofuels set by the RED.

Certification: An inspection (certification audit) procedure by means of which the conditions for issuing a certificate to an economic operator are assessed by a certification body.

Certification body: An independent inspection (audit) firm providing certification services for biofuels. A certification body concludes an agreement with a voluntary scheme on the certification of economic operators using a voluntary scheme's certification system. Certification bodies issue certificates on behalf of the voluntary schemes.

Chain of custody/supply chain: The whole production chain from the farmer growing the feedstock for the production of biofuels up to the biofuel producer or trader. See: 'Elements of the supply chain'.

Compliant biofuels: Biofuels that comply with the RED mandatory sustainability criteria.

Consultant: The contractor selected by the European Commission to provide the Commission with an assessment of voluntary schemes against the mandatory sustainability requirements established by the RED, and to provide the Commission with reports on the impact of biofuels production on social sustainability.

Cross compliance: The obligation for a farmer to comply with certain general statutory management requirements concerning the environment, public, animal and plant health, animal identification and registration and animal welfare, as well as with good agricultural and environmental conditions.

DG Energy: Directorate-General for Energy of the European Commission responsible for developing and implementing the EU energy policy.

Double counted biofuels: Biofuels produced from waste, residues, non-food cellulosic material and ligno-cellulosic material whose contribution to the achievement of the target for the use of energy from renewable sources in all forms of transport is considered (counted) to be twice their energy content.

Double counting: The contribution of biofuels produced from waste, residues and non-food cellulosic material to the achievement of the target for the use of energy from renewable sources in transport is counted to be twice their energy content.

Economic operator: A business producing and/or trading biomass or biofuels. Economic operators have to demonstrate that they comply with sustainability requirements, which can be done in accordance with a national system or making use of voluntary schemes. Economic operators are part of the biofuels supply chain.

Elements of the supply chain: Economic operators such as farms/plantations, first gathering/collecting points, traders/warehouses, conversion units (mills, refineries, processing plants), transport and market players (those who bring sustainable biofuels into the market).

Eurostat: The statistical office of the European Union, which is a Commission directorate-general providing the European Union with statistics at European level that enable comparisons between countries and regions.

GHG: Greenhouse gases. A greenhouse gas is a gas that contributes to the natural greenhouse effect. The Kyoto Protocol covers a basket of six greenhouse gases produced by human activities: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆).

ILUC: Indirect land-use changes. Land-use changes occurring *indirectly* as a result of displaced demand previously destined for food/feed/the fibre market as a result of biofuel demand.

Independent auditing: The auditing of the information submitted by economic operators. It should verify that the systems used by economic operators are accurate, reliable and protected against fraud. Independent auditing is performed by certification bodies.

Ktoe: One kilo (thousand) tonnes of oil equivalent. The tonne of oil equivalent (toe) defines the calorific value of fuels. It is a unit of energy defined as the amount of energy released by burning one tonne of crude oil. Ktoe is used by Eurostat to present the reported use of biofuels in transport.

National system: The legal framework set by the Member States for verification that economic operators comply with the RED sustainability criteria.

Recognition: Approval by the Commission for a period of 5 years of a voluntary scheme, following assessment that the voluntary scheme adequately covers the sustainability criteria, applies a mass balance methodology and meets adequate standards of reliability and independent auditing, as required by the RED.

RED: Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

Sustainability criteria: Criteria for biofuels defined by the RED, related to GHG emission saving and land use.

Target/'10 % transport target': The overall RED target for each Member State to ensure that the share of energy from renewable sources in all forms of transport in 2020 is at least 10 % of the final consumption of energy in transport in that Member State. For the calculation of the share only sustainable biofuels may be taken into account.

Transparency platform: An online platform required by the RED to increase transparency, facilitate and promote cooperation between Member States and make public relevant information which the Commission or a Member State deems to be of key importance to the RED and to the achievement of its objectives.

UCO: Used cooking oil — common feedstock used for the production of advanced biofuel

Voluntary scheme: A sustainability certification system established to demonstrate compliance with the sustainability criteria for biofuels.

I The 'Renewable Energy Directive' (RED) requires each Member State to ensure that by 2020 the share of energy from renewable sources used in all forms of transport is at least 10 % of the final consumption of energy in transport. In practice, considering the present stage of technical development and possibilities to use alternative energies in transport, the 10 % target can be achieved only through a substantial use of biofuels.

II Biofuels emit fewer greenhouse gases (GHG), CO₂ in particular, than fossil fuels, because the quantity of carbon emitted during combustion is equal only to the amount absorbed by the source plants during growth. However, the sustainability of biofuels as a source of renewable energy is compromised by additional emissions due to land use change.

III To ensure that biofuels placed on the EU market are sustainable, the RED lays down a number of sustainability criteria to be respected by economic operators. Furthermore, only biofuels certified as sustainable can be taken into account by the Member States for the achievement of their 10 % transport target. The sustainability of most biofuels placed on the EU market is certified by voluntary schemes recognised by the Commission. The recognition decisions are valid for 5 years and are issued after the positive assessment of the schemes' certification procedures.

IV The audit addressed the question 'Have the Commission and Member States set up a reliable certification system for sustainable biofuels?' We conclude that, because of weaknesses in the Commission's recognition procedure and subsequent supervision of voluntary schemes, the EU certification system for the sustainability of biofuels is not fully reliable.

V We found that the assessments carried out by the Commission as a basis for the recognition of voluntary schemes did not adequately cover some important aspects necessary to ensure the sustainability of biofuels. In particular, the Commission did not require voluntary schemes to verify that the biofuel production they certify does not cause significant risks of negative socioeconomic effects, such as land tenure conflicts, forced/child labour, poor working conditions for farmers and dangers to health and safety. Similarly, the impact of indirect land-use changes (ILUC) on the sustainability of biofuels is not covered by this assessment. Although we acknowledge the technical difficulties in assessing the impact of ILUC, the relevance of the EU sustainability certification system is undermined without this information.

VI

Furthermore, the Commission granted recognition decisions to voluntary schemes which did not have appropriate verification procedures to ensure that the origin of biofuels produced from waste was indeed waste, or that, as required by the RED directive, biofuel feedstocks cultivated in the European Union fulfil the EU environmental requirements for agriculture.

VII

Some recognised schemes were insufficiently transparent or had governance structures comprising only representatives from few economic operators, thus increasing the risk of conflict of interest and preventing an effective communication with other stakeholders.

VIII

The Commission does not supervise the functioning of recognised voluntary schemes. Since the recognition decision is issued on the basis of a documentary review of the certification procedures, the lack of supervision means that the Commission cannot obtain assurance that voluntary schemes actually apply the certification standards presented for recognition. Furthermore, the Commission has no means to detect alleged infringements of voluntary schemes' rules as there is no specific complaint system in place and the Commission does not verify whether complaints directly addressed to voluntary schemes are correctly dealt with by them.

IX

As regards the achievement of the 10 % transport target, Member States are responsible for ensuring that the statistics concerning sustainable biofuels reported to the Commission are reliable. We found that these statistics might be overestimated, because Member States could report as sustainable biofuel whose sustainability was not verified. There were also problems with the comparability of data reported by the Member States.

X

Based on the audit observations, the Court formulates the following recommendations:

1. For future recognitions, the Commission should carry out a more comprehensive assessment of voluntary schemes to ensure that the schemes:
 - (i) assess the extent to which certified biofuels production entails a significant risk of negative socioeconomic effects and of ILUC. To this end, the Commission should require voluntary schemes to report once a year based on their certification activities any relevant information concerning the above mentioned risk;
 - (ii) effectively verify that EU biofuel feedstock producers comply with EU environmental requirements for agriculture;
 - (iii) provide sufficient evidence of the origin of waste and residues used for the production of biofuels.

2. For future recognitions, the Commission should assess whether the voluntary schemes' governance reduces the risk of conflict of interests and request the voluntary schemes to ensure transparency.
3. The Commission should supervise recognised voluntary schemes by:
 - (i) checking that the schemes' certification operations comply with the standards presented for recognition;
 - (ii) requesting voluntary schemes to set up a transparent complaints system.
4. The Commission should propose that the Member States support their statistics with evidence on the reliability of the biofuels quantities reported.
5. To ensure comparability of the statistics on sustainable biofuels and to increase assurance on the reliability of data on advanced biofuels, the Commission should propose to the Member States a harmonisation of the definition of waste substances.

Definition of biofuels

01

Biofuels emit fewer greenhouse gases (GHG), CO₂ in particular, than fossil fuels, because the amount of CO₂ emitted during combustion of the biofuel is captured during the growth of the feedstock (the source materials — plants — absorb carbon dioxide as they grow)¹. However, this equation only works if there are no additional emissions due to land use change, which can be direct (for example, forest land is converted to agriculture land with a loss of stored carbon) or indirect (to compensate for the use of food crops for the production of biofuels, more land has to be cultivated to ensure food supplies); this means that, in addition to the GHG emissions due to the cultivation of biofuels crops, additional emissions are caused by the reclamation and cultivation of new areas for food crops. Competition with food production does not occur with biofuels produced from wastes, residues or other non-food biomass.

02

Biofuels are defined in the relevant European Union legislation as ‘liquid or gaseous fuel for transport produced from biomass’², i.e. from biodegradable agricultural, forestry or fishery products, waste or residues or from biodegradable industrial and municipal waste. At present, the only biofuels produced and used in relevant quantities in the EU are biogasoline (including bioethanol) and biodiesel.

03

On the basis of the feedstock used, biofuels may be referred to as:

- conventional (first-generation) biofuels, mainly produced from agricultural crops which are also food or feed crops (i.e. for human or animal consumption, e.g. cereals, sugarcane, beet, and oilseeds);
- advanced (second-generation and third-generation) biofuels produced from feedstocks, such as waste or residues, which do not compete directly with food and feed crops.

- 1 Meaning that the greenhouse gas emissions, in particular CO₂, released when converting biomass to energy (biofuel combustion) are equivalent to the amount of CO₂ absorbed by the plants during their growing cycles.
- 2 Article 2(i) of Directive 2009/28/EC (RED) and Article 2(9) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ L 350, 28.12.1998, p. 58).

The EU biofuels market

04

According to Eurostat data³, in 2014 the total of biofuels used in the European Union amounted to 14 370 ktoe (thousand tonnes of oil equivalent), made up of 11 367 ktoe of biodiesel (around 4 % of the total of transport fuel) and 2 637 ktoe of biogasoline (around 0.9 % of the total of transport fuel) (see *Annex I*). The most recent data published by the Commission⁴ show that in 2012 79 % of biodiesel and 71 % of bioethanol consumed in the EU were produced within the EU. Imports came primarily from Argentina and Indonesia for biodiesel, and from the United States and Brazil for bioethanol.

05

The total agriculture area required to produce feedstock for biofuels consumed in the EU amounted in 2012 to 7.8 million hectares, made up of 4.4 million hectares in the EU (3 % of the total EU cropland) and 3.5 million hectares outside the EU⁵. The use of crops such as maize, wheat, sugar beet or sugar cane for the production of biofuels has triggered public concerns about the risk of diverting crops and farmland from food to biofuels production.

Biofuels as a source of renewable energy in the EU transport sector

A target of 10 % of renewable energy in transport to be achieved by 2020

06

Directive 2009/28/EC on the promotion of the use of energy from renewable sources (the ‘renewable energy directive’, hereinafter ‘the RED’) is part of the EU energy and climate change package⁶, which was adopted by the Council on 6 April 2009. A new renewable energy package, including bioenergy sustainability policy for 2030, is to be presented by 2017.⁷

3 Eurostat tables ‘SHARES 2014’, results and detailed results, see also *Annex I* to this report.

4 COM(2015) 293 final of 15 June 2015 ‘Renewable energy progress report’.

5 SWD(2015) 117 final of 15 June 2015 ‘Technical assessment of the EU biofuels sustainability and feasibility of 10 % renewable energy in transport’, p. 3.

6 The 2020 package is a set of binding legislation, see http://ec.europa.eu/clima/policies/strategies/2020/index_en.htm

7 COM(2015) 572 final of 18 November 2015 ‘State of the Energy Union 2015’.

Introduction

07

The RED requires the EU to cover at least 20 % of its final energy consumption with energy from renewable sources by 2020. In addition, the RED lays down that each Member State has to 'ensure that the share of energy from renewable sources in all forms of transport in 2020 is at least 10 % of the final consumption of energy in transport in that Member State'⁸. That target may be achieved by increasing the use of electricity and other alternative energies from renewable sources in transport and by incorporating biofuels with fossil fuels. In practice, considering the present stage of technical development and possibilities to use electricity from renewable sources or other alternative energies in transport, the 10 % transport target can be achieved only through a substantial use of biofuels. In 2014 the biofuel incorporation rate in European Union transport fuel was around 5 %⁹.

08

Since biofuels made from agricultural crops compete with food production, in 2015 the European legislator introduced¹⁰ a ceiling of 7 % for the contribution of biofuels produced from food crops to the 10 % transport target to be achieved by 2020.

09

As noted earlier, competition with food production does not occur with biofuels produced from wastes, residues or other non-food biomass. Hence, the RED stipulates that their contribution to the achievement of the EU's 10 % transport target should be counted double. This means that Member States could theoretically meet the 10 % target with 5 % of biofuels produced from ligno-cellulosic, non-food cellulosic, waste or residues materials. According to Eurostat statistics for 2014, the share of biofuels, based on double counting, in the reported total use of biofuels in transport for all Member States was around 20 % (see **Annex I**).

8 Article 3(4) of the RED.

9 Biofuels Barometer. Euroobserver, July 2015.

10 Directive (EU) 2015/1513 of the European Parliament and the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources (OJ L 239, 15.9.2015, p. 1)

Sustainability criteria for biofuels

10

To mitigate the environmentally negative effects of direct land use change (see paragraph 1), the RED lays down that biofuels must comply with a number of sustainability criteria, set out in **Box 1**. The RED also refers to other issues which can affect the sustainability of biofuels, such as the potential negative socioeconomic effects (i.e. land tenure conflicts, forced/child labour, poor working conditions, etc.), GHG emissions caused by indirect land use change, fraud prevention and transparency with regard to biofuel production.

Box 1

Sustainability criteria set out in RED Article 17(2) to 17(6)

- (a) Greenhouse gas emission savings from the use of biofuels must be at least 35 %.
- (b) Biofuels shall not be made from raw material obtained from land with high biodiversity value (i.e. primary forest and other wooded land, nature protected area, highly biodiverse grassland).
- (c) Biofuels shall not be made from raw material obtained from land with high carbon stock (i.e. wetland, forested area, peatland).
- (d) Agricultural raw materials cultivated in the EU and used for the production of biofuels shall respect the minimum requirements for good agricultural and environmental conditions and some statutory management requirements defined by the CAP.

11

Only sustainable biofuels may be taken into account for the achievement of the 10 % transport target. It is the responsibility of the Member States to ensure that the amounts declared are backed by valid certificates, and to collect and send this data to Eurostat. To ensure that biofuels placed on the EU market are sustainable, the Member States must require economic operators in the biofuels supply chain to show that the sustainability criteria have been fulfilled¹¹. Operators can show that their consignments of biofuel comply with the sustainability criteria by fulfilling the requirements of national control systems or by making use of voluntary schemes recognised by the Commission¹².

11 RED Article 18(3).

12 RED Article 18(4).

12

Generally national systems require or accept as proof of sustainability the certificates issued under the voluntary schemes recognised by the Commission. Overall, all national systems include the use of recognised voluntary schemes, and usually several voluntary schemes operate in each Member State. Therefore, voluntary schemes certify most of the sustainable biofuels placed on the EU market.

Certification of sustainable biofuels by voluntary schemes recognised by the Commission

13

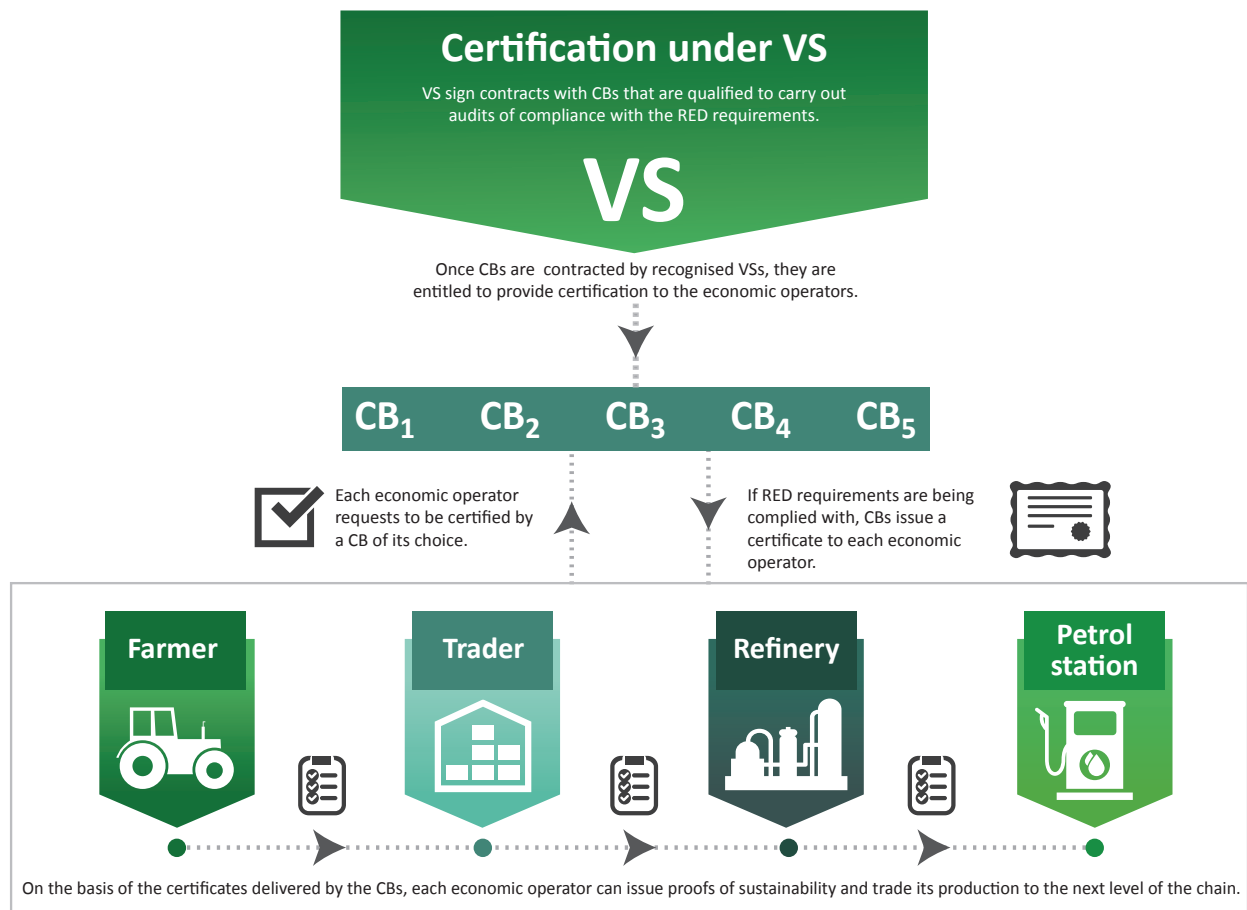
A voluntary scheme is a certification system for the sustainability of biofuels. Voluntary schemes are established mostly by privately run entities. Many voluntary schemes have been developed by groups of economic operators and other interested parties ('roundtables' or consortia). There are also voluntary schemes developed by biofuel producers. Voluntary schemes can apply criteria which are stricter than the RED criteria and additional criteria, e.g. social criteria or criteria adapted to local conditions, and criteria to promote best agricultural practices. They may also take into account additional sustainability aspects such as soil, water and air protection.

14

For the purpose of certification, the whole production chain from the farmer growing the feedstock up to the biofuel producer should be checked. To carry out the controls the voluntary schemes rely on independent auditors (i.e. 'certification bodies', which are natural or legal persons), which certify compliance with sustainability criteria by economic operators on behalf of a voluntary scheme in accordance with a contract concluded with that scheme. The certification bodies' auditors may carry out documentary and on-the-spot checks on farmers, first biomass collecting points, warehouses, oil mills, biofuels plants and biomass or biofuels traders (See **Figure 1**).

Figure 1

Certification under VS



Note: VS — voluntary scheme; CB — certification body.

Source: European Court of Auditors.

15

The operator producing biomass or biofuels pays certification costs to the certification body and fees to the voluntary scheme and obtains a certificate carrying the logo of the voluntary scheme. Every economic operator in the chain of cultivation and conversion of biomass to biofuels has to provide purchasers of biomass or biofuels with information about the certificate it has obtained and the sustainability characteristics of the products it delivers.

16

When an economic operator is certified by a recognised voluntary scheme, a Member State may not require further evidence of compliance with sustainability criteria¹³. Therefore, a certificate issued by a recognised voluntary scheme is valid in all EU Member States. The recognised voluntary schemes certify biomass produced in the EU and also imported from third countries.

17

The Commission's responsibility is the recognition of voluntary schemes. The Commission has also the possibility of repealing the recognition decision if a scheme does not implement all the elements on which the decision was based. The recognition decisions are valid for a period of 5 years. The first recognition decision was issued in 2011. Up to December 2015 the Commission had recognised 19 voluntary schemes (see **Annex II**)¹⁴.

13 RED Article 18(7).

14 See Article 2(2) of each recognition decision.

18

Considering the key role played by voluntary schemes for the verification of the sustainability of biofuels, it is essential that the Commission ensures that only reliable voluntary schemes are recognised. Therefore, the audit focused on the procedure applied by the Commission for the recognition of voluntary schemes (i.e. the recognition assessment framework).

19

Furthermore, as only sustainable biofuels may be taken into consideration for the achievement of the EU's 10 % transport target, it is essential that reliable data are collected on the quantities of certified sustainable biofuels placed on the market in each Member State. A further subject of the audit was therefore to examine whether the data collected by the Member States and submitted to Eurostat regarding the share of sustainable biofuels in transport were reliable.

20

The main audit question was the following:

Have the Commission and Member States set up a reliable certification system for sustainable biofuels?

21

The main audit question was further broken down into the following sub-questions:

- Does the Commission's recognition of voluntary schemes ensure that the certified biofuels are sustainable?
- Does the Commission ensure that recognised voluntary schemes operate as intended?
- Are national data relating to the share of biofuels in total transport fuels reliable?

22

The audit was carried out between May and November 2015 and covered the Commission's recognition assessments from 2011 to 2015. At the Commission, the audit covered the tendering procedures applied for the selection of the external consultant to assist the Commission with the assessment of voluntary schemes, the assessment and recognition of voluntary schemes and the subsequent supervision of voluntary schemes by the Commission.

Audit scope and approach

23

We also visited four Member States (Germany, France, Poland and the United Kingdom). These Member States were selected because they produce and/or consume the largest volumes of biofuels. In the Member States visited the audit focused on the systems used to collect and verify the figures on the use of sustainable biofuels the Member States report for publication in Eurostat statistics.

24

Voluntary schemes and the related certification bodies do not benefit from any EU expenditure and are therefore not subject to an audit by the European Court of Auditors. Consequently, we were not in a position to examine whether the recognised voluntary schemes operated effectively and whether their sustainability certificates were reliable. The scheme operators agreed however to provide an insight into their activities and organisation during information visits by the Court's auditors. We also paid similar visits to certified operators in the biofuels production chain.

The Commission's recognition assessment framework did not include some important sustainability aspects related to biofuel production

25

Given that a large volume of biofuel is certified by voluntary schemes and that only voluntary schemes recognised by the Commission can produce valid sustainability certificates, it is essential that the recognition decisions are based on a complete and thorough assessment of the voluntary schemes' certification standards and governance. Furthermore, to ensure that voluntary schemes certify truly sustainable biofuels the recognition process should include an assessment of all relevant sustainability aspects linked to biofuel production.

26

As noted earlier, the Commission's assessments of voluntary schemes were carried out by an external contractor on behalf of the Commission based on procedures previously agreed by the Commission (the recognition assessment framework). The Commission's selection of the external contractor was based on sound criteria and, overall, was compliant with the relevant provisions of the financial regulation applicable to the general budget of the Union. The examination of the consultant's assessments of four voluntary schemes shows that they correctly applied the assessment framework agreed with the Commission.

27

We also assessed whether the recognition assessment framework thoroughly covered the sustainability of biofuel production. We found that the framework only assesses the RED mandatory sustainability criteria. Therefore, other important aspects, necessary to ensure the sustainability of biofuels, were not covered by the assessment.

The respect of EU environmental requirements for agriculture was not ensured

28

The RED lays down as a sustainability criterion¹⁵ for feedstocks cultivated in the European Union the fulfilment of the environmental requirements and agricultural and environmental conditions defined in the CAP¹⁶. We found that, before granting recognition, the Commission did not verify whether voluntary schemes checked that biofuels feedstock producers (farmers) respect those conditions and requirements. As a result, we found that in three of the four voluntary schemes examined their standards did not allow effective and comprehensive verification of the fulfilment of that sustainability criterion. Those schemes relied on controls carried out by national authorities in the framework of the CAP, but they had no access to the results of such controls (see **Box 2**).

15 RED Articles 17(1) and 17(6).

16 These requirements and conditions are part of what is known as cross-compliance obligations. See **Annex IV** to this report.

Box 2

Good and weak practices for the verification of fulfilment of these requirements

Only one voluntary scheme visited set standards requiring complete and comprehensive verification of fulfilment of these requirements. Its standards explicitly state that it is necessary to check that farmers fulfil the requirements. Its 'regulation to carry out audits' requires that certification bodies inspect whether the farms comply with the sustainability requirements of the RED.

In the case of the three remaining voluntary schemes, their principles either provided incomplete procedures (checklist) which did not cover all EU environmental requirements for agriculture referred to in the RED, allowed compliance to be checked merely on the basis of farmers' self-declarations or relied on the controls carried out by the national authorities responsible for cross-compliance within the CAP control system, even though the schemes do not have access to the results of these controls when certifying the farmers.

29

It is worth noting that we systematically highlight in our annual reports infringements by farmers of these EU environmental requirements (see paragraph 28)¹⁷.

Non-mandatory sustainability issues

30

Certain sustainability aspects of biofuels production are referred to in the RED¹⁸, but are not set as mandatory requirements. For example, there are no binding criteria under the RED to ensure that EU biofuel production does not generate negative socioeconomic effects. The possibility of such negative effects is therefore not assessed during the Commission's recognition procedure for voluntary schemes. However, the production of biofuels could endanger local communities and cause damages to society at large. Examples of key problems to be addressed are land tenure conflicts, forced/child labour, poor working conditions and health and safety risks¹⁹.

17 ECA 2014 annual report, paragraphs 7.22 and 7.33 (OJ C 373, 10.11.2015).

18 Article 17(7).

19 Risks regarding biofuels production are identified, for example, in the '2050 criteria overview' in 'WWF Report, September 2012', (http://assets.worldwildlife.org/publications/458/files/original/2050_criteria_final_low_res_online_viewing.pdf?1348517472).

31

Although the consultant assessing the voluntary schemes delivered a methodology to the Commission in June 2012 for the assessment of whether voluntary schemes address non-mandatory sustainability issues, to date the Commission has not applied that methodology. As a result, the voluntary schemes were not obliged to include non-mandatory sustainability issues in the standards they submitted for recognition. We nevertheless found that one of the four voluntary schemes examined had set up certification procedures which included the verification of socioeconomic effects (see **Box 3**).

Box 3

A good practice for the verification of social sustainability aspects

To ensure sustainable and environmentally and socially sound production of biomass, this voluntary scheme's standard for sustainable production not only aims to prevent ecological damage but also to safeguard appropriate working conditions and protection of employees' health on farms. This includes the protection of soil, water and air, and also safe working conditions (through training and education, use of protective clothing and proper and timely assistance in the event of accidents) and respect of human rights, labour rights and land rights. According to its principles, biomass production must promote responsible labour conditions and workers' health, safety and welfare and must be based on responsible community relations.

32

The RED requires the Commission to report every 2 years to the European Parliament and the Council on the impact on social sustainability in the EU and in third countries of increased demand for biofuels, on the impact of EU biofuel policy on the availability of foodstuffs at affordable prices, in particular for people living in developing countries, and on wider development issues. The Commission's reports must also address the respect of land-use rights and national measures taken for soil, water and air protection²⁰. We note that, although this reporting requirement cannot compensate for the lack of systematic certification of these sustainability aspects, it could provide the necessary overview of the significance of these issues.

33

To date the Commission has submitted two reports²¹. We consider these reports to be of limited use as they contain limited information and unclear conclusions, as shown in **Box 4**. These reports do not provide enough data to assess the impact of the demand for biofuels on social sustainability and to propose, where necessary, corrective actions.

20 Article 17(7), second subparagraph.

21 COM(2013)175 final, accompanied by SWD(2013)102 final and COM(2015)293 final, accompanied by SWD(2015)117 final. We have examined both the COM and the SWD documents.

Box 4

Examples of insufficient information in Commission reports on social aspects affected by biofuel production

The Commission's 2013 report does not address 'wider development issues in developing countries'²² (for example, rural and social development such as local prosperity, social well-being and access to energy, capacity development and technology transfer). The background report's assessment of labour conditions²³ is based merely on the status of ratification of international conventions by countries exporting biofuels to the EU.

Labour conditions issues in terms of remuneration, health safety (including exposure to chemicals), contractual agreements or gender-specific impacts are not assessed in those reports.

The 2015 Commission report does not address wider development issues in developing countries at all. Its background report provides a vague conclusion that 'overall wider development issues in developing countries could be positively or negatively impacted by biofuel production'²⁴.

22 Reporting on 'wider development issues in developing countries' is required by the RED, but it does not specify what such issues are.

23 Ecofys et al., 'Renewable energy progress and biofuel sustainability', 2012.

24 Ecofys et al., 'Renewable energy progress and biofuels sustainability', 2014, p. 173.

The impact of indirect land-use changes (ILUC) was not considered**34**

Biomass production typically takes place on cropland which was previously used for agricultural production destined to be used for food or feed production. Since such agricultural production is still necessary, it might be partly displaced to land that was previously not cropland, such as grassland or forest. This process is known as indirect land-use change (ILUC), which risks negating the greenhouse gas savings that result from increased biofuel use, because grasslands and forests absorb high levels of CO₂. By converting such land types to cropland, atmospheric CO₂ levels might increase, as conversion could lead to additional and substantial greenhouse gas emissions.

Observations

35

The importance of assessing the impact of ILUC was highlighted in a mid-term evaluation of the RED²⁵, which noted that biofuels can result in a GHG emission reduction, but the size of the emission reduction depends significantly on the type and feedstock used and on whether the uncertain impact of ILUC is taken into account. When ILUC is taken into account, some biofuels like the ones from waste and residues or sugar cane can result in high emission savings, while other biofuels from crops can in some cases even result in a net increase of GHG emissions.

36

However, the RED does not require biomass and biofuels suppliers to include greenhouse gas emissions associated with indirect land-use change in the calculation of greenhouse gas emissions savings²⁶. Consequently, the impact of ILUC on the sustainability of biofuels is not covered by the voluntary schemes' assessment and recognition procedure.

37

We acknowledge the technical difficulties in assessing the impact of ILUC on greenhouse gas emissions (mainly a lack of methodology for calculating emissions from ILUC that can take place all over the world, and not necessarily in the areas where biomass for biofuels is produced). The amended RED²⁷ deals with the problem by capping the share of biofuels from food crops that can be counted towards the 2020 target to 7 %, and introducing additional reporting obligations for the Member States and the Commission²⁸. At the time of the audit, there was no information available on the sources that may be used by the Commission for reporting on ILUC.

Weak verification of the origin of waste or residues used for the production of biofuels

38

Biofuels produced from waste and residues, such as biodiesel produced from used cooking oil (UCO), are considered to be more beneficial for the environment, since they do not compete with food production for the use of agricultural land.

25 CE Delft, 'Mid-term evaluation of the renewable energy directive: a study in the context of the REFIT programme', Delft, April 2015 (www.cedelft.eu).

26 Nevertheless, Article 3 of Directive (EU) 2015/1513 amending the RED requires the Commission to submit to the Parliament and the Council by 31 December 2016 a report including, among other things, an assessment 'of the best available scientific evidence on indirect land-use change greenhouse gas emissions associated with the production of biofuels'.

27 Directive (EU) 2015/1513.

28 Annex VIII to the amended RED sets out provisional estimated ILUC emissions to be taken into account by Member States and the Commission for reporting purposes.

Observations

39

The possibility of double counting biofuels produced from waste and residues has led to a situation where biodiesel produced from UCO (see paragraph 9) 'is often traded at a higher price than biodiesel from vegetable oil'²⁹. This entailed a risk of virgin oil being adulterated to be sold as UCO. This risk was noted in a recent study³⁰ which echoed concerns from operators and other stakeholders concerning 'the risk of fraud if virgin vegetable oil would be sold as UCO'.

40

It was therefore essential that, as part of the recognition process, the Commission assess the procedures of voluntary schemes to ensure that the origin of biofuels produced from waste is indeed waste. However, we found that this had not been the case, because the Commission did not assess whether voluntary schemes verify the origin of waste used for the production of biofuels.

41

In October 2014 the Commission acknowledged that voluntary schemes were not providing sufficient evidence of the origin of waste (e.g. restaurants in the case of UCO) and addressed a guidance note to all recognised schemes. The note suggested they develop specific auditing procedures covering the origin of waste and residues, 'i.e. the economic operator where the waste or residue material arises'. The note pointed out that with regard to waste and residues there is 'a real risk of fraud' due to economic incentives (e.g. where 'the price that can be achieved for feedstock declared to be a waste or a residue is higher than the price of the virgin product'³¹).

42

This means that, since 2011, when the first voluntary schemes were recognised, until at least 2014, the biofuel certified as being produced from waste, and thus counted double towards national targets, was certified without appropriate verifications as to the origin of the waste used. As our audit detected weaknesses in the supervision of voluntary schemes (see paragraphs 50 to 56) and in the enforcement of the requirements set out in guidance notes (see paragraphs 57 and 58) we cannot conclude that verification had effectively improved.

29 EC note on verification of the chain of custody of biofuels made from waste and processing residues of 10.10.2014, p. 2, paragraph 5.

30 Ecofys, 'Trends in the UCO market', 2013, p. 2.

31 Guidance note of 10.10.2014, p. 2.

Highly biodiverse grassland was not consistently protected until recently

43

A sustainability criterion set out in the RED³² concerns the protection of ‘highly biodiverse grassland’ (including endangered or vulnerable species) on that land³³. To enforce this, the Commission was required to define³⁴ ‘the criteria and geographic ranges to determine which grassland’ had to be considered ‘highly biodiverse grassland’. This definition was established by the Commission in December 2014³⁵ and applied from 1 October 2015, although the RED had to be enforced by the Member States by 5 December 2010.

44

Despite the late definition of highly biodiverse grassland, some voluntary schemes ensured implicit compliance with that criterion from the beginning of their certification activities by prohibiting any conversion of grassland. For example, three of the four voluntary schemes examined stipulated that ‘until definitions, criteria and geographic areas featuring grassland with high biodiversity are determined by the Commission, any conversion of grassland in or after January 2008 is prohibited’. Other schemes left the ‘highly biodiverse grassland’ aspect out of the recognition process, which means that the sustainability certificates delivered by these schemes before 1 October 2015 did not include verification of whether the feedstock was obtained from such land. Consequently, the Commission granted a ‘partial recognition’, explicitly excluding this sustainability criterion.

45

So far, three of the 19 recognised voluntary schemes have obtained partial recognition on those terms. These schemes therefore certified the sustainability of biofuels without checking whether their feedstocks had been produced after conversion of grassland that might have been biodiverse grasslands. Despite the insufficient assurance provided by these schemes as regards that sustainability aspect, we found that their certificates were actually considered as covering all the RED sustainability criteria. This means, for example, that the biofuel certified by these schemes was counted to establish the level of progress towards the 10 % transport target to be achieved in 2020.

32 Article 17(3)(c).

33 Highly biodiverse grasslands differ between climatic zones and may include, inter alia, heaths, pastures, meadows, savannahs, steppes, scrublands, tundra and prairies, recital 3 of Commission Regulation (EU) No 1307/2014 of 8 December 2014 on defining the criteria and geographic ranges of highly biodiverse grassland for the purposes of Article 7b(3)(c) of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels and Article 17(3)(c) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (OJ L 351, 9.12.2014, p. 3).

34 RED Article 17(3), second subparagraph, in the version applicable until September 2015.

35 Regulation (EU) No 1307/2014.

Insufficient consideration was given to transparency and governance

46

Apart from the sustainability issues above, the Commission's assessment and recognition did not cover the voluntary schemes' governance (management and staff qualifications). A voluntary scheme's governance and the technical capacity of its staff have a significant influence on the robustness of its standards and their implementation. Transparent governance, ensuring adequate representation of stakeholders, and solid know-how on the part of managers and staff, increases the likelihood of correct field-level implementation of the standards and reduces the risk that specific interests of certain biofuels operators are favoured. If a voluntary scheme's governance is in the hands of representatives of only a few economic operators, this increases the risk of conflict of interest, and consequently of ineffective verification of compliance with the scheme's standards. Likewise, if the technical capacity of the voluntary scheme's managers and staff is weak, this increases the risk that the quality control of the certification bodies will not ensure effective compliance by economic operators with the scheme's standards.

47

On the basis of publicly available information, we examined the transparency and the governance of the 19 recognised voluntary schemes (see **Annexes II and III**). We identified five types of schemes: voluntary schemes set up as an association of single interested persons or entities, voluntary schemes set up as consortia of organisations or associations, voluntary schemes set up by a public body, voluntary schemes set up by private companies, and a greenhouse gas emission calculation tool managed by a research institute and recognised only as a measurement scheme for GHG emission savings.

48

Our analysis presented in **Annex II** confirms that, overall, transparency of governance is greater for the voluntary schemes based on 'open' membership and for those created by public bodies than for company or consortium based schemes, which in general publish less information. For one voluntary scheme, not even a webpage was found. The information publicly available suggests that, for company-based schemes, no specific governance bodies or procedures have been created and that voluntary schemes are run by the current management and staff of the companies. In our view, these governance arrangements present a higher risk of conflict of interests.

49

Some voluntary schemes include different stakeholder groups in their managing bodies, such as producers, traders, environmentalists, researchers, etc. This is good practice as the representation of different groups of interests ensures a more balanced decisionmaking process, as well as a more comprehensive development of the schemes' standards and a wider supervision of their implementation.

Supervision over voluntary schemes was lacking

The operation of the schemes was not adequately supervised ...

50

Voluntary schemes are recognised on the basis of a documentary review of their certification standards and procedures to be applied after recognition. Therefore we consider that supervision of voluntary schemes' operations is essential to provide assurance that the certificates of sustainability are issued in accordance with the standards presented for recognition.

51

The RED does not require the Commission to exercise supervision over voluntary schemes. We found that, once it had recognised them, the Commission did not supervise the voluntary schemes (see paragraph 57). According to the Commission, the only control instrument at its disposal is the withdrawal of the recognition of a scheme, if it has evidence that the scheme has incurred a serious infringement of its certification rules and requirements. However, as the Commission does not supervise how voluntary schemes operate, it is very unlikely that it can obtain sufficient evidence in this regard.

52

In fact, our review of the work carried out by the certification bodies shows that the standards presented by the voluntary schemes as a basis for their recognition are not always applied in practice, which shows the need for active supervision by the Commission of how voluntary schemes operate.

53

For example, the standards of one voluntary scheme visited require the certification body to perform an audit of a number of biomass producers and confirm that the biomass declared as sustainable is from a known and sustainable origin, and that conformity with the RED sustainability criteria can be demonstrated. According to the voluntary scheme's instructions the audits can be documentary verification audits and/or on-site verification audits, depending on the context, the situation and the level of risk. However, we found that in practice the certification body's auditors did not carry out any on-site verification of farmers, although the scheme's standard required on-site verifications in certain circumstances.

54

Another example concerns the requirement for protection of wetland and peatland. According to the RED³⁶, sustainable biofuels cannot be grown in areas converted from such high carbon stocks. Voluntary schemes must set up specific guidelines related to that issue and arrange a comprehensive compliance control system to be used by independent auditors. In France, the audit revealed that despite the fact that the visited voluntary scheme had developed extensive standards related to the conversion of such protected areas, it was difficult for the certification bodies to verify compliance with those standards. As confirmed by the French national authorities, this was due to the fact that in France there was no accurate mapping system related to the identification of wetlands and peatlands. The national mapping database is still under construction and does not guarantee accuracy, updating, integrity and completeness of data on wetland and peatland areas. Therefore, the control system put in place by the voluntary scheme on the wetland and peatland areas could not be applied in practice. The documentary recognition assessment made by the Commission's contractor could not identify that specific problem.

55

Furthermore, there is no specific complaint system in place to inform the Commission of alleged infringements of voluntary scheme rules and the Commission does not verify whether complaints directly addressed to voluntary schemes or made public elsewhere are correctly dealt with by them. The Commission relies on the stakeholders' awareness of the existence of a general system for complaining via the internet against infringements of EU law. However, the webpage of that system explains that 'the European Commission can only take up your complaint if it is about a breach of Union law by authorities in an EU Member State', which does not apply to voluntary schemes.

36 Article 17(4) and 17(5).

Observations

56

We found that certain Member States imposed specific requirements on voluntary schemes and certification bodies (see **Box 5**). Although this might be seen as an attempt to compensate at national level for supervision that is not provided at EU level, we consider that it undermines the harmonisation in the EU of the certification of sustainable biofuels. This is because in certain Member States recognition by the Commission is, in practice, of no value if the voluntary scheme does not fulfil certain specific conditions imposed by the Member State. The lack of harmonised supervision of voluntary schemes at EU level increases the risk of discriminatory control practices in the Member States.

Box 5

Examples of national requirements restricting the effects of Commission's recognition

To be able to carry out the certification activities contracted with a voluntary scheme, certification bodies with their seat in Germany must obtain recognition by the German administration and submit themselves to controls which are additional to the controls already carried out by the voluntary scheme. In particular, the administration has the right to be present at any audit carried out by the certification body, in what is called a 'witness-audit', and, if the audit takes place outside Germany, the certification body must cover the travel costs of the officials charged to carry out the 'witness-audit'. In Poland, to be able to carry out certification activities, both the voluntary schemes and the certification bodies acting on their behalf are required to establish an office in that country.

... and required improvements to their procedures were not appropriately enforced

57

Although direct supervision of voluntary schemes is the most effective way to identify and correct their operational shortcomings, the promotion of best practices through guidance notes can also contribute to improving the effectiveness of the schemes. So far, the Commission has issued three guidance notes (which are not legally binding) to the recognised voluntary schemes, aimed at improving the verification of the origin of waste or residues used for the production of biofuels, allowing the identification of highly biodiverse grasslands and increasing the transparency of the schemes.³⁷

37 EC notes on 'Verification of the chain of custody of biofuels made from waste and processing residues' (10.10.2014); on 'Implementation of the recently adopted criteria and geographic ranges of highly biodiverse grassland' (29.1.2015); and on 'Update of Commission website, notifications and transparency measures' (12.3.2015).

58

We found that, despite the importance of the issues covered by the guidance notes, the Commission did not press for compliance with the requirements set out in the notes, for example by setting deadlines for voluntary schemes to implement the required improvements. For example, in the note issued on 12 March 2015 concerning transparency measures the recognised voluntary schemes were requested to provide a link to their websites and to disclose other relevant information as detailed in **Annex III** of this report. We reviewed the voluntary schemes' websites and found that, almost 1 year after the guidance note had been issued, the requirements were far from being accomplished: many gaps still existed where information had either not been published or was unclear or incomplete.

59

For the legislator, transparency is a paramount concern as Article 24 of the RED requires the Commission to establish an online public transparency platform 'to increase transparency and facilitate and promote cooperation between Member States'. According to the same provision 'the platform may be used to make public relevant information which the Commission or a Member State deems to be of key importance to this directive and to the achievement of its objectives'.

60

The Commission considers that a dedicated website of the Commission Directorate-General for Energy³⁸, containing all legally required information received from the Member States and other useful information, constitutes the transparency platform. In its current form, the transparency platform, managed solely by the Commission, does not fully respond to the RED requirement to 'facilitate and promote cooperation between Member States'. This was confirmed by the stakeholders met (national authorities, voluntary schemes), which strongly supported more transparency and information sharing.

61

Box 6 shows that the need for strengthening information sharing is not restricted to the Commission and the Member States, but also applies to the voluntary schemes.

38 <https://ec.europa.eu/energy/en/renewable-energy-transparency-platform>

Box 6

Example of a possible infringement due to insufficient information sharing

Today, it is possible for an economic operator to whom certification is denied by a given certification body to address itself to another certification body with the purpose of obtaining a certificate without implementing the improvements requested by the first certification body.

Although there is an obligation for the new certification body to request the last certification report and an obligation for the economic operator to provide it, there is no way to ensure that this is actually done.

In some voluntary schemes, information is transparent and audit reports issued by one certification body are accessible to the other certification bodies operating under that scheme. However, if the two certification bodies are under different voluntary schemes, the new certification body has no means of seeing the report that led to the denial of certification if the operator refuses to disclose it.

The statistics of biofuel certified as sustainable might be overestimated ...**62**

The largest part of energy used in transport comes from fuel. Without a substantial contribution from biofuels the target of 10 % of renewable energy in transport in 2020 cannot be achieved. As only biofuels complying with the sustainability criteria may be taken into consideration for the calculation of the share of renewable energy in transport, it is essential that data on the use of sustainable biofuels are reliable. Eurostat publishes such data in specific tables ('SHARES' tables) on the renewable energy share of energy consumption in transport and other economic sectors covered by the RED.

63

It is the responsibility of the Member States to ensure that the amounts declared are backed by valid certificates and may therefore be considered compliant with the sustainability criteria for biofuels.

64

When Eurostat receives the data sent by the Member States, it carries out an overall data consistency check³⁹ and verifies to the greatest extent possible that the reported data comply with the harmonised methodology. The problems encountered by Eurostat typically concern data input (typing mistakes) and data gaps. If, after contacting national authorities, Eurostat still finds problems in the reported data, it informs the Commission's Directorate-General for Energy, which is responsible for supervising the implementation of the RED by the Member States and is the directorate-general empowered to take further action.

... because they included biofuels whose sustainability was not verified ...

65

In Poland the law has only required compliance of biofuels with RED sustainability criteria, and verification of compliance, since 1 January 2015. This means that in the period 2011-2014 economic operators were not required to produce proof of sustainability for the quantities of biofuel blended with fossil fuel. However, Poland reported that all biofuels used were 'compliant' with the RED sustainability criteria. Eurostat accepted and published those data despite the absence of provisions requiring compliance of the biofuels with the RED sustainability criteria and verification of such compliance.

66

France, where the national system for certifying sustainable biofuels was not yet fully operational in 2011, declared '0' compliant biofuels for that year and that was the figure published in Eurostat's statistics. In our view, this should have been the case for Poland too.

... and because the origin of the biomass used for double counted biofuels was insufficiently verified

67

The national statistics clearly separate the quantities of biofuels which are double and single counted, but only the national authorities can ensure that the origin of each type of biofuel is traceable (see paragraph 63). Considering the inadequacy of the checks to verify the origin of biomass consisting of waste or residues referred to in paragraphs 38-42, it cannot be excluded that data on double counted biofuels might include quantities of biodiesel certified as produced from UCO, whilst, in reality, the feedstock may have been from virgin oil or fraudulently denatured virgin oil.

³⁹ For example, by comparing the received data with other publicly available sources (e.g. previously prepared publications by other bodies) or verifying that the reported data are complete and do not contain input errors.

68

Double counting is the responsibility of Member States. Before the amendment of the RED, double counting was generically possible for biofuels produced from waste and it was actually up to the Member States to decide what substances could be classified as waste. We found that there was no unique identification in the EU of the substances to be considered waste⁴⁰. Consequently, double counted data reported by different Member States were not directly comparable: the same substance could be considered in one Member State as having a use, and therefore not being waste, while in another Member State it was considered as waste and eligible for the production of biofuels which were double counted⁴¹.

69

Since its amendment in September 2015⁴² the RED has contained a list of feedstocks that can be used to produce double counted biofuels⁴³. However, the RED still allows, for the production of advanced biofuels in the installations existing before the adoption of the amendment, the use of feedstocks not included in the list, but determined to be waste by the competent national authorities⁴⁴.

70

Member States pointed out that the verification of the chain of custody of biofuels made from waste and residues is an area that requires close monitoring as a risk of fraud had been identified. Examples of detected risks of fraud linked to waste and residues are:

- the operator could classify as waste or residues something that it is not (or was adulterated); or
- the operator may attempt to get the same double counted product certified twice, by different voluntary schemes.

71

Monitoring and possible measures to prevent fraud have been discussed among the Member States, mainly on the initiative of Germany and France, but the discussions have been deferred as other Member States are of the opinion that only the Commission has the legitimacy to lead such discussions.

40 See Section 2 of 'The sustainability of advanced biofuels in the EU', IEEP, London, 2013.

41 For example, tall oil (which comes from the wood processing industries) is considered as waste and, thus, double counted in Sweden, whilst in the United Kingdom it is not doubled counted as it is used as a chemical precursor.

42 Directive (EU) 2015/1513.

43 Article 3(f) and Annex IX, to be complied with by Member States by 10 September 2017.

44 RED Article 3(4)(e), as amended.

72

As part of the EU energy and climate change package adopted by the European Council in 2009, the Member States have to ensure that the share of energy from renewable sources in all form of transport in 2020 would be at least 10 % of their final consumption in this sector. The source of renewable energy predominantly used by the Member States in the transport sector is biofuel. However, Member States can only count biofuels certified as sustainable by voluntary schemes recognised by the Commission towards this 10 % transport target⁴⁵.

73

The audit addressed the question 'Have the Commission and Member States set up a reliable certification system for sustainable biofuels?' We conclude that, because of weaknesses in the Commission's recognition procedure and in the subsequent supervision of voluntary schemes, the EU certification system for the sustainability of biofuels is not fully reliable.

74

The Commission's recognition of voluntary schemes, limited to the RED mandatory verification requirements, does not ensure that the certified biofuels are sustainable. We found that the assessments carried out by the Commission as a basis for the recognition of voluntary schemes did not cover adequately some important aspects which are necessary to ensure the sustainability of certified biofuels. In particular, the Commission did not require voluntary schemes to verify that the biofuel production they certify does not cause significant risks of negative socio-economic effects, such as land tenure conflicts, forced/child labour, poor working conditions for farmers and dangers to health and safety. Similarly, the impact of ILUC on the sustainability of biofuels is not covered by this assessment. Although we acknowledge the technical difficulties in assessing the impact of ILUC, the relevance of the EU sustainability certification system is undermined without this information (paragraphs 30 to 37).

75

Furthermore, the Commission granted recognition decisions to voluntary schemes which did not have appropriate verification procedures to ensure that the origin of biofuels produced from waste was indeed waste (i.e. did not check the economic operator where the waste was produced). Not until October 2014 did the Commission become aware of the problem and then issue a guidance note suggesting voluntary schemes should develop specific auditing procedures covering the origin of waste (paragraphs 38 to 42).

45 Member States can also set up national certification systems but the bulk of biofuels used in the EU are certified by voluntary schemes.

Conclusions and recommendations

76

The RED requires the fulfilment of EU environmental requirements for agriculture as a sustainability criterion for biofuel feedstocks cultivated in the European Union. We found that voluntary schemes which did not have specific verification procedures to ensure compliance with this sustainability requirement were nevertheless recognised by the Commission (paragraph 28).

Recommendation 1 — Comprehensive assessment of voluntary schemes requesting recognition

For future recognitions, the Commission should carry out a more comprehensive assessment of voluntary schemes. In particular, the recognition assessment framework should also verify that the schemes:

- (a) Assess the extent to which the certified biofuel production entails a significant risk of negative socioeconomic effects, such as land tenure conflicts, forced/child labour, poor working conditions for farmers, dangers to health and safety, and of ILUC emissions. To this end, the Commission should require voluntary schemes to report once a year based on their certification activities any relevant information concerning the abovementioned risks. The Commission should take account of such voluntary schemes' reports when fulfilling its own reporting obligations as laid down in the RED.
- (b) Effectively verify that EU biofuel feedstock producers comply with EU environmental requirements for agriculture.
- (c) Provide sufficient evidence of the origin of waste and residues used for the production of biofuels.

77

We found that some schemes were insufficiently transparent or had governance structures comprising only representatives from a few economic operators, thus increasing the risk of conflict of interest and preventing effective communication with other stakeholders (i.e. Commission, national authorities, other schemes, certification bodies and economic operators). In our view, this is explained by the fact that the Commission did not consider these issues during the recognition process. The Commission issued in 2015 a guidance note aiming to improve the transparency of the recognised voluntary schemes. However, its requirements were not enforced (paragraphs 46 to 49, and 59).

Recommendation 2 — Ensuring appropriate governance and transparency of voluntary schemes

For future recognitions, the Commission should:

- (a) assess whether the voluntary schemes' governance reduces the risk of conflict of interests;
- (b) request that voluntary schemes set up an official website where minimum transparency requirements will be made publicly available. Those requirements include, at least: official contact details (address, telephone, email); information on the governance of the voluntary scheme and the qualifications and experience of its managers and key staff; complete list of the certification bodies operating under the scheme; detailed lists of valid, expired and withdrawn certificates (with dates); audit reports; information on the voluntary schemes' complaints/enquiries system and information on infringements detected. The voluntary schemes should undertake to update the information disclosed in a timely manner.

78

We also found that the Commission does not supervise the functioning of recognised voluntary schemes. Since the recognition decision is issued on the basis of a documentary review of the certification procedures, the lack of supervision means that the Commission cannot obtain assurance that voluntary schemes actually apply the certification standards presented for recognition. Furthermore, the Commission has no means to detect alleged infringements of voluntary scheme rules as there is no specific complaints system in place and the Commission does not verify whether complaints directly addressed to voluntary schemes are correctly dealt with by them (paragraph 55).

Recommendation 3 — Supervision by the Commission

The Commission should with immediate effect supervise recognised voluntary schemes by:

- (a) checking that the schemes' certification operations comply with the standards presented for recognition;
- (b) requesting voluntary schemes to set up transparent complaints systems which should, as a minimum, have the following features: (i) be easily accessible on their websites; (ii) be informative on how complaints should be made, on the timeframe of the procedure and on the possibility of appealing against the rejection of complaints; (iii) cover both complaints against certification bodies and economic operators under the voluntary scheme; (iv) have a tracking system based on registers. The Commission should systematically verify information contained in the registers and take action if deemed appropriate.

79

Member States are responsible for ensuring that the data on sustainable biofuels reported to the Commission are reliable. The national data relating to the share of compliant biofuels in total transport fuels may not be reliable, as the statistics of biofuel certified as sustainable might be overestimated. We found that Member States (as is the case of Poland) could report biofuels as sustainable whose sustainability had not been demonstrated (paragraph 65).

Recommendation 4 — Collection and reporting of data on sustainable biofuels

In order to increase assurance on the reliability of data on sustainable biofuels, the Commission should propose to the Member States that they support their statistics with evidence on the reliability of the biofuels quantities reported. This might be in the form of an overall certificate/declaration issued by the entity in charge of collecting data on sustainable biofuels and transmitting it to the national authority, which sends it to Eurostat.

Conclusions and recommendations

80

The reliability and comparability of the statistics on sustainable biofuels are undermined by the fact that there is no unique identification of the substances to be considered as waste in the EU. Consequently, definition of waste differs between Member States: the same substance can be considered in one Member State as having a use and therefore as not being waste, while in another Member State it is considered as waste and eligible for the production of biofuels which are double counted. One of the amendments adopted in September 2015 introduces an annex to the RED with a list of feedstocks and fuels whose contribution towards the 10 % transport target may be double counted. However, the RED still allows use of feedstocks not included in the list, but determined to be waste by the competent national authorities⁴⁶ (paragraphs 68 and 69).

Recommendation 5 — Harmonisation of the definition of wastes used for production of advanced biofuels

Although the definition of feedstock that may be used to produce 'double counted' biofuels is now set out in the amended RED, the possibility that a substance is considered waste in one Member State, but not in another, remains. In order to ensure comparability of the statistics on sustainable biofuels and to increase the assurance on the reliability of data on advanced biofuels, the Commission should propose to the Member States as soon as possible a harmonisation of the definition of waste substances, not included in the RED list, used for the production of advanced biofuels in the installations existing before the adoption of Directive (EU) 2015/1513 amending the RED.

This Report was adopted by Chamber I, headed by Mrs Kersti KALJULAI, Member of the Court of Auditors, in Luxembourg at its meeting of 25 May 2016.

For the Court of Auditors



Vítor Manuel da SILVA CALDEIRA
President

⁴⁶ RED Article 3(4)(e), as amended.

Fuels and biofuels in transport — ktoe 2014

Member State	Fossil Fuels			Biofuels		
	Petrol (1)	Diesel (2)	Total petrol and diesel (3=1+2)	All biofuels ^{a)}	Compliant biofuels	Of which: Double counted biofuels
BE	1 241.74	6 862.66	8 104.40	387.60	387.60	0.00
BG	495.06	1 610.39	2 105.45	110.87	110.87	0.00
CZ	1 509.78	3 757.93	5 267.71	316.76	316.76	0.00
DK	1 299.22	2 375.54	3 674.76	213.42	213.42	0.00
DE	17 474.16	31 813.51	49 287.67	2 806.49	2 806.49	518.25
EE	236.22	494.00	730.22	5.76	0.00	0.00
IE	1 136.93	2 420.73	3 557.66	116.18	116.18	76.96
EL	2 583.00	2 175.27	4 758.26	135.21	30.05	30.05
ES	4 405.03	20 616.75	25 021.78	944.88	0.00	0.00
FR	6 522.12	32 159.62	38 681.74	2 955.35	2 955.35	133.91
HR	536.15	1 216.01	1 752.16	29.86	29.86	0.00
IT	8 303.64	22 987.15	31 290.79	1 065.17	1 063.47	185.80
CY	350.22	230.06	580.28	9.72	9.72	6.09
LV	201.30	688.12	889.41	22.02	22.02	0.00
LT	197.19	1 213.96	1 411.15	63.20	59.71	0.00
LU	313.25	1 707.96	2 021.21	68.68	68.57	41.37
HU	1 211.90	2 332.40	3 544.31	193.27	193.27	52.77
MT	73.95	102.70	176.65	4.65	4.32	4.32
NL	3 715.85	5 770.92	9 486.77	349.06	336.56	212.56
AT	1 581.62	5 483.35	7 064.97	593.41	531.91	0.00
PL	3 462.26	9 090.31	12 552.57	705.37	705.37	0.00
PT	1 119.49	3 813.39	4 932.88	261.25	151.54	15.82
RO	1 339.28	3 615.17	4 954.45	166.96	166.65	0.00
SI	439.60	1 288.93	1 728.53	42.37	42.37	0.00
SK	540.22	1 350.55	1 890.78	133.87	130.60	0.00
FI	1 364.95	2 101.32	3 466.27	497.65	496.28	451.01
SE	2 731.97	3 676.79	6 408.76	992.10	992.10	419.80
UK	12 678.62	24 554.41	37 233.03	1 179.00	1 179.00	686.00
Total	77 064.72	195 509.91	272 574.63	14 370.13	13 120.04	2 834.71

of which:

Biodiesel	11 367.62	4.0%	% in transport fuels
Biogasoline	2 636.91	0.9%	

Total transport fuels **286 944.76**

a) The figures in this column include biodiesel, biogasoline and, for certain Member States, small quantities of biogas.

Source: EUROSTAT SHARES 2014 detailed results.

Governance of voluntary schemes

Voluntary scheme	Ownership	Governance	Statutes or equivalent
VS owned by its members (open membership)			
VS01	Members	The General Assembly appoints six Board Members. The Board manages the affairs of the association and is bound to the resolutions of the General Assembly , where all members participate. The Board reports to the General Assembly and is supported by an Executive Board and Technical Committees . The Executive Board carries out the operational business of the certification system.	Yes
VS02	Members	Members are assigned to Electing Classes. Electing Classes appoint two to 18 Directors for the Board of Directors . The Board has responsibility for the supervision and management of the scheme. The Board appoints the executive officer and the executive body of the scheme: the Chief Executive Officer and the Secretariat . The Board also constitutes a Governance Committee . The Board sets up and delegates certain powers to Committees, Working Groups and Task Forces .	Yes
VS03	Members	The General Assembly is the highest decision-making body of the scheme and it elects the Executive Board of a maximum of 15 members. The Executive Board appoints a Secretariat and entrusts it with the operational management of the scheme. Ad hoc Working Groups are formed according to the needs for some specific topics.	Yes
VS04	Members	The scheme's members are organised into seven Chambers that elect the governing body of the organisation (the General Assembly of Delegates). The Assembly elects a Board of Directors (of five to nine members) that is responsible for the management of the scheme and represents the Association towards third parties. The Board of Directors provide oversight to the Secretariat and may appoint an Executive Director . The Executive Director is responsible for implementing the strategy and policies of the Association and leads the activities of the Secretariat, which is responsible for the day-to-day running of the scheme. The Directors may also set up committees, working groups and advisory panels .	Yes
VS05	Members	The ordinary General Assembly is comprised of all scheme Members. The General Assembly elects the three to 16 members of the Board of Governors . The general management of the scheme is the responsibility of the Board of Governors in collaboration with the Secretary General . The Board of Governors entrusts the daily management of the scheme to the Secretary General and to the Secretariat . The Board of Governors may appoint and delegate part of its powers and responsibilities to Working Groups, Standing Committees or Task forces .	Yes

Voluntary scheme	Ownership	Governance	Statutes or equivalent
VS owned by consortiums, organisations or associations			
VS06	Consortium of seven entities.	The consortium of the seven founding members appoint members to the Steering Committee of the scheme. The Steering Committee is the governing entity of the scheme and mandates (by selection and contract) a Technical Advisor — which is also part of the Steering Committee — with appropriate technical competences for the technical management of the scheme.	Yes
VS07	Umbrella body for several assurance schemes.	The umbrella body Board comprises a team of experts and governs the operation of the company. It oversees the different schemes, which are managed by sector Boards. The Assurance Sector Boards oversees the management of the Sector Schemes, among them the Voluntary Scheme , and their activities. These Sector Schemes are made up of experts and representatives from the sectors. The Assurance Sectors each have Technical Advisory Committees which are made up of experts within the sector. They are responsible for the ongoing maintenance and development of Voluntary Schemes' Standards. Different schemes operate in different food sectors and the umbrella body helps develop the detailed standards and inspection systems for each sector.	Not found
VS08	Company Limited by Guarantee, with the members/guarantors comprising eight different entities.	The online information available is not very clear and suggests that the scheme's Board of Directors reports to the mother company's Chief Executive . The scheme is controlled by a Board of Directors responsible for the direction, overall management and administration of the company. Two working groups are responsible for developing and monitoring technical and marketing aspects of the scheme's operation.	Not found
VS09	Ten associations and organisations from the agricultural, trade, fuel, biofuel and biogas sectors.	A Shareholder Assembly appoints the Executive Management and nominates an Advisory Committee and a Sanction Committee for supporting the Executive Management. The management and operation of the scheme was delegated (through an agency agreement) to a company. It is the Advisory Committee that initiate and coordinate measures to maintain and further develop the scheme's certification system.	Not found
VS10	Trade association.	The scheme's Technical Advisory Group is made up of representatives from the trade association as Scheme Owners and a lead Certification Body. This Expert Group makes decisions and recommendations regarding operational issues surrounding the application and delivery of the scheme.	Not found
VS11	Confederation.	The scheme is owned and managed by a confederation , which developed and implemented the scheme.	Not found
VS12	Confederation.	The scheme is owned and managed by a confederation , which developed and implemented the scheme.	Not found

Voluntary scheme	Ownership	Governance	Statutes or equivalent
VS owned by public bodies			
VS13	National Standardisation Body	The scheme is managed by the National Standardisation Body according to the structures established for managing its schemes. The National Standardisation Body is responsible for the development of standards. The National Standardisation Body has the following bodies involved in the management of its schemes: Scheme Management; Scheme Management Committee; Committee of Experts; and Review Committee.	Not found
VS14	National Research Institute	The System Administrator is the Director of the National Research Institute. He/she sets up the System Board . The System Board supervises certifying bodies within the framework of the system and sets directions for the development of the scheme. The Board is supervised both by the System Administrator and the System Council . The System Office supports the Board in its activities and reports to the System Administrator. The scheme's System Council is comprised of five to 10 members (external experts appointed by the Director of the National Research Institute). Its main tasks are: supervision over independence, transparency, avoiding conflicts of interests between the system participants and certification bodies, examination of complaints and proposals, and setting directions for the development of the scheme.	Not found
VS owned by companies			
VS15	Private company	Management under the overall responsibility of the company that will delegate responsibility to its own personnel or to specialist third party companies.	Not found
VS16	Private company	Not found	Not found
VS17	Private company	From DG Energy website: 'The documents referred to in this scheme are part of [the company] Management System and are updated and maintained according to the procedures therein. The person responsible for updating this scheme in [the company] is the Director, Sustainability and Supplier Compliance. This verification scheme is reviewed annually by [the company] HSEQ & Sustainability function. The participants of the scheme are informed accordingly. In case material changes are introduced, the scheme is sent to the European Commission for information or for approval.'	Not found
VS18	Private company	Not found	Not found
Calculation tool recognised as VS			
VS19	Research Institute	Currently the voluntary scheme is managed by the Research Institute , one of the former project partners.	N/A

Source: European Court of Auditors, based on internet sites.

As an EU institution, the European Court of Auditors has to balance the EU's interest in guaranteeing the transparency of its acts and ensuring the best use of public funds against the interference with the right of the persons and entities concerned to respect for their private life in general and to the protection of their personal data in particular. Therefore, we do not identify by name in this report the voluntary schemes concerned by our observations. An objective description of the facts which establishes the shortcomings reported should suffice for the competent institutions to draw their own conclusions from the report and to adopt appropriate measures in response.

Annex III

Transparency of voluntary schemes

Voluntary scheme ^{a)}	Transparency items listed in the Commission's guidance letter ^{b)}					Other important transparency items				
	Contact details (telephone, email, address)	Economic operators under the VS (valid certificates)	Economic operators not any longer under the VS (expired certificates)	Certification bodies	Names of other VSs recognised	Governance	Statutes or equivalent	Team qualifications (CVs, etc.)	Complaints system	Detected infringements (withdrawn certificates)
VS owned by its members (open membership) or by public bodies										
VS02	Yes	Yes	Yes	Yes	Not found	High	Yes	Yes	Yes (not online)	Yes
VS03	Yes	Yes	Not found	Yes	Not found	High	Yes	Yes	Yes (not online)	Not found
VS13	Yes	Yes	Yes	Yes	Not found	Low	Not found	Not found	Needs improvement	Yes
VS05	Partly ^{c)}	Yes	Not found	Yes	Not found	High	Yes	Yes	Yes	Not found
VS04	Yes	Yes	Yes	Yes	Not found	High	Yes	Yes	Yes (not online)	Not found
VS14	Yes	Yes	Not found	Yes	Not found	High	Not found	Not found	Needs improvement	Not found
VS01	Yes	Yes	Yes	Yes	Not found	High	Yes	Not found	Yes (not online)	Yes

Best practices

improvements recommended

Unclear situation. Improvements recommended.

- (a) Due to its different nature, the Biograce GHG calculation tool is not part of this list.
- (b) The items listed also include the latest versions of the scheme but only the Commission can confirm its compliance.
- (c) At least one of the forms of contact listed is not disclosed.
- (d) Information of the owner entities. Not indicated if it applies to the VS.

Governance: High = sufficient information is disclosed.
 Medium = information disclosed should be improved.
 Low = Information disclosed is insufficient.

Annex III

Voluntary scheme ^{a)}	Transparency items listed in the Commission's guidance letter ^{b)}						Other important transparency items				
	Contact details (telephone, email, address)	Economic operators under the VS (valid certificates)	Economic operators not any longer under the VS (expired certificates)	Certification bodies	Names of other VSs recognised	Governance	Statutes or equivalent	Team qualifications (CVs, etc.)	Complaints system	Detected infringements (withdrawn certificates)	
Other kinds of VS											
VS08	Yes	Not found	Not found	Not found	Not found	Medium	Not found	Not found	Not found	Not found	
VS17	Not found	Not found	Not found	Not found	Not found	Low	Not found	Not found	Not found	Not found	
VS11	Yes ^{d)}	Yes	Not found	Not found	Not found	Low	Not found	Not found	Needs improvement	Yes	
VS06	Partly ^{c)}	Yes	Yes	Yes	Not found	High	Yes	Not found	Needs improvement	Yes	
VS16	Yes	Not found	Not found	Not found	Not found	Low	Not found	Yes ^{d)}	Not found	Not found	
VS07	Yes	Not found	Not found	Yes	Not found	Medium	Not found	Yes	Needs improvement	Not found	
VS09	Yes	Yes	Yes	Yes	Not found	High	Not found	Not found	Not found	Yes	
VS12	Yes ^{d)}	Yes	Not found	Not found	Not found	Low	Not found	Not found	Needs improvement	Yes	
VS10	Yes ^{d)}	Yes	Not found	Yes	Yes	Medium	Not found	Yes ^{d)}	Needs improvement	Not found	
VS18	Yes	Not found	Not found	Yes	Not found	Low	Not found	Not found	Not found	Not found	
VS15	Yes ^{d)}	Yes	Not found	Yes	Yes	Low	Not found	Not found	Not found	Not found	

best practices

improvements recommended

unclear situation. Improvements recommended.

- (a) Due to its different nature, the Biograce GHG calculation tool is not part of this list.
- (b) The items listed also include the latest versions of the scheme but only the Commission can confirm its compliance.
- (c) At least one of the forms of contact listed is not disclosed.
- (d) Information of the owner entities. Not indicated if it applies to the VS.

Governance: High = Sufficient information is disclosed
 Medium = information disclosed shall be improved
 Low = Information disclosed is insufficient.

Source: European Court of Auditors, based on internet sites.
 As an EU institution, the European Court of Auditors has to balance the EU's interest in guaranteeing the transparency of its acts and ensuring the best use of public funds against the interference with the right of the persons and entities concerned to respect for their private life in general and to the protection of their personal data in particular. Therefore, we do not identify by name in this report the voluntary schemes concerned by our observations. An objective description of the facts which establishes the shortcomings reported should suffice for the competent institutions to draw their own conclusions from the report and to adopt appropriate measures in response.

Cross-compliance requirements

Cross-compliance requirements referred to by Article 17(6) of the RED

(‘the requirements and standards under the provisions referred to under the heading ‘Environment’ in part A and in point 9 of Annex II to Council Regulation (EC) No 73/2009 of 19 January 2009 and the minimum requirements for good agricultural and environmental condition defined pursuant to Article 6(1) of that Regulation’)

Council Regulation (EC) No 73/2009, Annex II, Part A:

Environment

1.	Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L 103, 25.4.1979, p. 1)	Article 3(1), Article 3(2)(b), Article 4(1), (2) and (4) and Article 5(a), (b) and (d)
2.	Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ L 20, 26.1.1980, p. 43)	Articles 4 and 5
3.	Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (OJ L 181, 4.7.1986, p. 6)	Article 3
4.	Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1)	Articles 4 and 5
5.	Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna (OJ L 206, 22.7.1992, p. 7)	Article 6 and Article 13(1)(a)

Point 9:

9.	Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1)	Article 3
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Article 6(1):

‘Good agricultural and environmental condition

1. Member States shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Member States shall define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework established in Annex III, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures.’

Annex III:

Issue	Compulsory standards	Optional standards
Soil erosion: Protect soil through appropriate measures	— Minimum soil cover — Minimum land management reflecting site-specific conditions	— Retain terraces
Soil organic matter: Maintain soil organic matter levels through appropriate practices	— Arable stubble management	— Standards for crop rotations
Soil structure: Maintain soil structure through appropriate measures		— Appropriate machinery use
Minimum level of maintenance: Ensure a minimum level of maintenance and avoid the deterioration of habitats	— Retention of landscape features, including, where appropriate, hedges, ponds, ditches trees in line, in group or isolated and field margins	— Minimum livestock stocking rates or/and appropriate regimes — Establishment and/or retention of habitats
	— Avoiding the encroachment of unwanted vegetation on agricultural land — Protection of permanent pasture	— Prohibition of the grubbing up of olive trees — Maintenance of olive groves and vines in good vegetative condition
Protection and management of water: Protect water against pollution and run-off, and manage the use of water	— Establishment of buffer strips along water courses ⁽¹⁾ — Where use of water for irrigation is subject to authorisation, compliance with authorisation procedures	

⁽¹⁾ Note: The GAEC buffer strips must respect, both within and outside vulnerable zones designated pursuant to Article 3(2) of Directive 91/676/EEC, at least the requirements relating to the conditions for land application of fertiliser near water courses, referred to in point A.4 of Annex II to Directive 91/676/EEC to be applied in accordance with the action programmes of Member States established under Article 5(4) of Directive 91/676/EEC.

Executive summary

IV

The Commission has conducted thorough assessments of all voluntary schemes that have been recognised fulfilling all the legal requirements of the Directive. The Commission considers that the voluntary schemes provide assurance that the certified biofuels comply with the mandatory criteria for which the schemes have been recognised on the basis of thorough assessments of all voluntary schemes certified. Nonetheless the Commission is always open to promote the further development of standards to improve the system even further, to address challenges that are encountered during the operation of the system and take into account changes of the legal base.

V

The RED defines a number of mandatory sustainability criteria for biofuels which have to be met to be eligible for support and to be counted towards the renewable energy targets. The assessments of the voluntary schemes adequately covered these mandatory sustainability criteria and the voluntary schemes were only recognised to the extent they were able to demonstrate compliance with those criteria.

In addition the RED makes reference to a number of other sustainability issues such as negative socio-economic effects. Many voluntary schemes include additional non mandatory sustainability criteria. This can be considered good practice but is strictly voluntary. The voluntary schemes were not assessed to which extent they cover also non-mandatory criteria. Consequently, also none of the voluntary schemes were recognised for covering these issues.

In the view of the Commission it would not be appropriate to oblige voluntary schemes to include non-mandatory sustainability criteria. If inclusion of those criteria should be obligatory, the legislator would have decided to include them in the set of mandatory criteria.

The Commission will continue to assess whether the recognition of voluntary schemes should be extended to non-mandatory sustainability aspects. It is noted, however, that the assessment of schemes with regard to non-mandatory criteria is complex because those are spelled out in much less detail in the legislative text than the mandatory criteria.

In order to mitigate the risk of ILUC the RED as amended by Directive (EU) 2015/1513 includes a cap of the amount of food based biofuels that can count towards the renewable energy targets (7% of transport energy consumption). The sustainability criteria themselves do not cover ILUC. Therefore, the voluntary schemes that are verifying compliance with the mandatory criteria for each batch of biofuel separately cannot be required to cover ILUC.

VI

The verification of the origin of wastes and residues was covered in the assessment. In all assessments it was required that the voluntary schemes apply the relevant provisions of the Directive. This covers all types of feedstock including wastes and residues. Specific audit criteria for biofuels produced from wastes and residues are not foreseen in the Directive. In the guidance note the Commission services reacted to market developments which could not be foreseen at the time the voluntary schemes were recognised and called for the implementation of dedicated measures to take into account an increased risk of fraud that emerged over time when Member States implemented the double counting mechanism. The voluntary schemes have updated their verification procedures accordingly.

Reply of the Commission

Further, the RED does not set out any specific obligation of verification for Member States in relation with Article 17(6) RED (which is linked to the CAP GAEC standards and other relevant Directives and Regulations). The Commission also is required to recognise voluntary schemes on other grounds than those included in Article 17(6) RED. Therefore, it would not be appropriate to include this element in the assessment of the voluntary schemes.

VII

The RED does not include requirements regarding the governance structure of voluntary schemes and thus the governance structure was not in the focus of the early assessments. The focus was to ensure that operators are subject to third party auditing which is explicitly mentioned in the Directive.

However, both governance structure and the transparency measures need more attention in the future. The main reason for this are the increased requirements for transparency and governance reflected in the amendments of Directive (EU) 2015/1513.

VIII

The supervisory power of the Commission regarding the implementation of all the operations was limited by the legislator. However, the Commission requires an independent third party audit.

The Commission is supervising the voluntary schemes in line with the legal competences provided by the RED as amended by Directive (EU) 2015/1513 which requires voluntary schemes to report annually on their operation. The Commission will on its own submit a report on the operation of voluntary schemes in April 2017.

The Commission agrees that supervision and transparency, including complaints procedures, could be strengthened.

IX

The Member States have partly transposed the RED including the sustainability criteria for biofuels with a significant delay.

In countries where the sustainability criteria for biofuels had not yet been implemented also the verification system was not yet in place and it was not possible to demonstrate that biofuel comply with the sustainability criteria. To the understanding of the Commission this caused the reporting issue. However, the renewable energy target for transport has to be fulfilled in 2020. The Commission is confident that the Member States will correctly implement the RED including the recent amendments by 2020. If necessary the Commission will take the measure foreseen by the treaty to enforce compliance of EU law.

X 1. (i)

The Commission partially accepts this recommendation. The Commission cannot oblige the voluntary schemes to include socio-economic criteria which are not mandatory. However, the voluntary schemes should report once a year based on their certification activities as set out in the RED amended by Directive (EU) 2015/1513. The Commission will take the reports received from the voluntary schemes into account in its own reports.

X 1. (ii)

The Commission accepts this recommendation in so far as compliance with Article 17(6) RED (which is linked to the CAP GAEC standards and other relevant Directives and Regulations) should be verified. Compliance with CAP GAEC standards and other relevant Directives and Regulations is verified as part of the CAP.

X 1. (iii)

The Commission accepts this recommendation and agrees that waste based biofuels deserve to be covered by dedicated verification procedures. The Commission has already acted in that direction as it has included the application of dedicated measures in all its assessments starting in October 2014.

X 2.

The Commission accepts this recommendation and agrees that both governance structure and the transparency measures need even more attention and has already taken the necessary steps through the requirements for increased transparency and governance reflected in the amendments of Directive (EU) 2015/1513.

X 3. (i)

The Commission accepts the recommendation.

It will address the issue in the context of the reporting on the operation of the voluntary schemes as foreseen in the RED as amended by Directive (EU) 2015/1513. The implementation of the scheme procedures by economic operators is verified by independent third party auditors.

X 3. (ii)

The Commission accepts the recommendation and has already taken the necessary steps.

X 4.

The Commission partially accepts this recommendation and will continue to work with Member States on the reliability of data supplied, as Member States will receive information from economic operators on compliance with the sustainability criteria. Further, Member States provide the Commission with a report on the quality of all data transmitted every five years. However, requiring additional evidence (certificates/declarations) for the purposes of one particular statistical data collection is not justified.

X 5.

The Commission accepts the need to have a harmonisation of definition of waste used for the production of advanced biofuel.

The legislator has already taken measures to harmonise the definition of waste in the RED. The RED as amended by Directive (EU) 2015/1513 includes a definition of waste by establishing a link to Directive 2008/98/EC.

Introduction

05

In many cases only a part of the crop is used to produce the biofuels while other parts, sometimes the main parts, are used for food and feed purposes. The displacement effect of conventional biofuels is therefore considerably lower but still significant.

Reply of the Commission

06

The Commission intends to present a policy proposal for the renewable energy package by the end of 2016.

09

The RED as amended by Directive (EU) 2015/1513 includes an Annex (Annex IX) with a list of feedstocks and renewable fuels that count double towards the renewable energy target for transport. Annex IX certainly includes wastes, residues or other non-food biomass but there is no formal link to these definitions.

All renewable energy sources consumed in transport, including renewable electricity, count towards the renewable energy target. It is expected that the contribution of renewable electricity will be significant (~2% points).

10

The RED as amended by Directive (EU) 2015/1513 requires that greenhouse gas emission savings of biofuels produced in new installation are at least 60%. The general requirement will increase to 50% as of January 2018.

Observations

28

The RED does not oblige the Member States to verify compliance with Article 17(6) RED (which is linked to the CAP GAEC standards and other relevant Directives and Regulations) although they are part of the criteria. The Commission is required to recognise voluntary schemes on other grounds than those included in Article 17(6) RED.

Common reply to paragraphs 30 and 31

The Commission is not obliged to recognise voluntary schemes and has so far recognised only schemes for covering Article 17(2)-(5) RED. Therefore, it was also not required to assess compliance with other non-mandatory sustainability issues.

The Commission notes that it would not be appropriate to oblige voluntary schemes to include non-mandatory sustainability criteria, as the legislator did not decide to include them in the set of mandatory criteria. Regarding specifically the social sustainability aspects (Box 3), the Commission notes that including such criteria in the scope of the certification can be considered good practice, yet notes that the inclusion is made on voluntary basis.

The Commission will nevertheless continue to assess whether the recognition of voluntary schemes should be extended to non-mandatory sustainability aspects. It is noted, however, that the assessment of schemes with regard to non-mandatory criteria is complex because those are spelled out in much less detail in the legislative text than the mandatory criteria.

Box 3

The Commission considers that including such criteria in the scope of the certification can be considered good practice, yet notes that the inclusion is made on a voluntary basis.

33

Whilst the Commission acknowledges the lack of data, in all reports, it provided references to and an assessment of the available data including additional dedicated studies regarding the impacts of the EU biofuel policy on developing countries.

Regarding the social aspects described in Box 4, the Commission notes that, whereas the exports of biofuels from developing countries are limited, it has provided reports on the impacts of the EU biofuel policy on wider developing countries in different reports submitted in 2013 and in 2015 including also as regards developing countries which do not export biofuels to the EU¹.

Common reply to paragraphs 34-37

The RED as amended by Directive (EU) 2015/1513 introduced a cap of (7% of transport energy consumption) the amount of food based biofuels that can count towards the renewable energy targets. This measure limits the incentive to use crops-based biofuels to meet the renewable energy targets and therefore limits the risk of ILUC induced by EU biofuel policy.

The sustainability criteria themselves do not cover ILUC. Therefore, the voluntary schemes that are verifying compliance with those criteria for each batch of biofuel separately cannot be required to cover ILUC.

The Commission will further analyse the matter and will publish the results of the analysis in a report that is due end of 2016.

40

The Commission acknowledges that waste-based biofuels deserve to be covered by dedicated verification procedures. The Commission has already acted in that direction as it has included the application of dedicated measures in all its assessments starting in October 2014.

Common reply to paragraphs 41-42

In the guidance note the Commission services reacted to market developments which could not be foreseen at the time the voluntary schemes were recognised and called for the implementation of dedicated measures to take into account an increased risk of fraud that emerged over time when Member States implemented the double counting mechanism.

The Commission issued the note to voluntary schemes to raise the attention on the subject and to ensure that all schemes take appropriate action. This does not indicate that this matter was generally treated inappropriately before. Indeed to our knowledge many of the relevant voluntary schemes took action on their own initiative. In the view of the Commission the possibility of voluntary schemes to react quickly and proactively to identified challenges is one of the merits of the certification systems.

45

Following adoption of the definition, the Commission requested partially recognised schemes to submit verification of compliance with the new definition. Three schemes that had been only partially recognised have submitted updates and have been assessed. The updating of the Decisions is currently ongoing.

¹ SWD(2013) 102 final; SWD(2015) 117 final

Reply of the Commission

46

The Commission's assessments were in the line with the requirements set by the RED. The RED did not include requirements regarding the governance structure of voluntary schemes and thus the governance structure was not in the focus of the early assessments. The focus was to ensure that operators are subject to third party auditing which is explicitly mentioned in the Directive.

The Commission considers, however, that governance structure should receive more attention in the future in order to further improve best practice. The main reason for this is the increase of the GHG emission calculation threshold that requires frequent calculation of actual GHG emission savings which require even stronger scrutiny.

Common reply to paragraphs 50-51

The supervisory power of the Commission regarding the implementation of all the operations was limited by the legislator. However, the Commission requires an independent third party audit.

The Commission is supervising the voluntary schemes in line with the legal competences provided by the RED as amended by Directive (EU) 2015/1513 which requires voluntary schemes to report annually on their operation. The Commission will on its own submit a report on the operation of voluntary schemes in April 2017.

53

The Commission has entered into a dialogue with the schemes in view to clarify the situation and to look for improvements. The Commission is currently checking a specific case and it is therefore too early for the Commission to comment at this stage.

However, in general terms the requirement to strengthen internal governance of schemes that has been taken on board in ongoing assessments can contribute towards a better oversight about the implementation of the scheme rules by certification bodies.

54

Many voluntary schemes operate globally. This means in practice that the auditor who is verifying compliance has a lot of responsibility and needs to decide on a case by case basis whether the supplied evidence provides sufficient assurances that the sustainability criteria are met. The Commission encourages the voluntary schemes to enter into a close dialogue with the auditors to continuously improve the certification standards.

55

Although there is no dedicated complaint system, the stakeholders have the possibility to contact the Commission should they have concerns regarding the operation of voluntary schemes. Indeed, the sustainability scheme for biofuels is a very technical subject that requires expert knowledge and the stakeholders are expected to be aware that the scheme has been recognised by the Commission.

56

The RED sets out clearly that the Member States are obliged to accept evidence from voluntary schemes. As long as this provision is respected Member States are welcome to contribute to the improvement of certification processes. In the view of the Commission nothing speaks for instance against the involvement of Member States in the supervision of certification bodies because certification bodies themselves are not recognised by the Commission. Member States however, should not question the validity of certificates issued by voluntary schemes.

Regarding the specific case of Poland referred to in Box 5, the Commission is currently verifying compliance of the requirement with EU law.

58

These notes are not legally binding for the voluntary schemes and are aimed to promote best practice by indicating what the Commission may require in the future. The Commission will enforce the adaptation of higher standards when the voluntary schemes apply for an extension of the recognition.

The Commission may also repeal the decisions if it has been clearly demonstrated that a scheme has not implemented elements considered to be decisive for the Decision and if severe and structural breach of those elements has taken place.

Common reply to paragraphs 59-60

The Commission attaches the highest importance to transparency.

The transparency requirement included in the RED is addressed via the dedicated website². It includes also a lot of useful information which is not legally required such as information on new events and relevant Commission documents. All legally required information received from the Member States can be found on this web site and the linked pages. As part of this web site also a page that is dedicated to the types of information referred to in RED has been established³.

61

In the updated assessment framework issued in November 2015 the Commission requires full verification by the third party auditors. The auditors should require access to all relevant information. If the system does not include this information it should not be accepted under the scheme. The auditors should also require access to the information on material that is certified under the name of other voluntary schemes. Voluntary schemes must publish the names of the operators that are or have been certified under the scheme. This will enhance transparency and exchange of information.

66

Poland transposed the RED, including the EU sustainability scheme for biofuels only in 2015. Therefore, during the period 2011-2014, the provisions of the RED were not yet in force. Member States shall ensure the quality of the data transmitted; the Commission has no legal means to contest the 2014 data on sustainable biofuels.

However, in the meantime Poland has transposed the RED. The Commission is confident that Poland and other Member States will correctly implement the RED in 2020, including the recent amendments by 2020. If necessary the Commission will take the measure foreseen by the treaty to enforce compliance of EU law.

2 <https://ec.europa.eu/energy/en/topics/renewable-energy>

3 <https://ec.europa.eu/energy/en/renewable-energy-transparency-platform>

Reply of the Commission

67

Member States shall ensure the quality of the data transmitted. In their data transmission to Eurostat, France reported value zero and Poland reported a non-zero value. All reported data passed validation rules (plausibility, coherence and consistency checks) given the information available to Eurostat at that time. Eurostat published data as transmitted by countries without any alterations or modifications.

72

The implementation of measure to combat fraud is a competence of the Member States. The Commission is supporting the efforts of the Member States to mitigate the risk of fraud and has created a working group in the Committee on the sustainability of biofuels and bio-liquids that will analyse different aspects and measures that are relevant in this context. The subject was also taken into account in the RED as amended by Directive (EU) 2015/1513 which is requiring the Member States to report on the measures they have taken against fraud and is calling for improved co-operation among national systems and between national systems and voluntary schemes.

Conclusions and recommendations

74

The Commission considers that the voluntary schemes provide assurance that the certified biofuels comply with the mandatory criteria for which the schemes have been recognised on the basis of thorough assessments of all voluntary schemes certified. Nonetheless, the Commission is always open to promote the further development of standards to improve the system even further, to address challenges that are encountered during the operation of the system and take into account changes of the legal base.

75

The RED defines a number of mandatory sustainability criteria for biofuels which have to be met to be eligible for support and to be counted towards the renewable energy targets. The assessments of the voluntary schemes adequately covered these mandatory sustainability criteria.

Many voluntary schemes include additional non mandatory sustainability criteria. This can be considered good practice but is strictly voluntary. The voluntary schemes were not assessed to which extend they cover also non-mandatory criteria. Consequently, also none of the voluntary schemes were recognised for covering these issues.

In the view of the Commission it would not be appropriate to oblige voluntary schemes to include non-mandatory sustainability criteria. If inclusion of those criteria should be obligatory, the legislator would have decided to include them in the set of mandatory criteria.

The Commission will continue to assess whether the recognition of voluntary schemes should be extended to non-mandatory sustainability aspects. It is noted, however, that the assessment of schemes with regard to non-mandatory criteria is complex because those are spelled out in much less detail in the legislative text than the mandatory criteria. Further, the recognition would not have direct legal consequences.

In order to mitigate the risk of ILUC the RED as amended by Directive (EU) 2015/1513 includes a cap of (7% of transport energy consumption) the amount of food based biofuels that can count towards the renewable energy targets. The sustainability criteria themselves do not cover ILUC. Therefore, the voluntary schemes that are verifying compliance with the mandatory criteria for each batch of biofuel separately cannot be required to cover ILUC.

76

As for conventional feedstock, traceability is ensured by the provisions of the Directive. With the guidance note the Commission services reacted to market developments which could not be foreseen at the time the voluntary schemes were recognised in the first place and called for the implementation of dedicated measures to take into account an increased risk of fraud that emerged mainly to the implementation double counting mechanism in the supply obligations.

77

The Commission is obliged to work within the framework set by legislator. As a consequence, it has to accept that the RED does not oblige the Member States to verify compliance with Article 17(6) RED (which is linked to the CAP GAEC standards and other relevant Directives and Regulations) although they are part of the criteria. The Commission is required to recognise voluntary schemes on other grounds than those included in Article 17(6) RED. Therefore, it would not have been appropriate to include this element in the assessment of the voluntary schemes

Recommendation 1 (a)

The Commission partially accepts this recommendation. The Commission cannot oblige the voluntary schemes to include socio-economic criteria because they are not mandatory. However, the voluntary schemes should report once a year based on their certification activities as set out in the RED amended by Directive (EU) 2015/1513 that stipulates on which matter voluntary schemes have to report (Article 18(6)). These legal reporting requirements focus on subjects related to auditing but the scheme can of course use the opportunity to include also other subjects. The Commission will take the reports received from the voluntary schemes into account in its own reports.

Recommendation 1 (b)

The Commission accepts this recommendation in so far as compliance with Article 17(6) RED (which is linked to the CAP GAEC standards and other relevant Directives and Regulations) should be verified. However, the RED does not oblige the Member States to verify compliance with Article 17(6) RED although they are part of the criteria. The Commission is required to recognise voluntary schemes on other grounds than those included in Article 17(6) RED. Compliance with CAP GAEC standards and other relevant Directives and Regulations is verified as part of the CAP.

Recommendation 1 (c)

The Commission accepts this recommendation and agrees that waste based biofuels deserve to be covered by dedicated verification procedures. The Commission has already acted in that direction as it has included the application of dedicated measures in all its assessments starting in October 2014.

78

The Commission attaches always the highest importance to transparency and has already taken action. Its services issued a guidance note to the voluntary schemes calling for the implementation of a number of transparency measures. This was done partially to ensure that voluntary schemes prepare themselves at an early stage for the increased need for transparency reflected in Directive (EU) 2015/1513 which was at a final negotiations stage at that point of time. These measures will be enforced when the voluntary schemes apply for a renewed recognition. This process is already ongoing.

Recommendation 2 (a)

The Commission accepts this recommendation and considers that potential conflicts of interest including the ownership of schemes should be taken into account. The Commission has already acted in that direction and is introducing in its assessments an analysis of the ownership and governance structure of the voluntary schemes.

Recommendation 2 (b)

The Commission accepts this recommendation and considers that voluntary schemes need to fulfil minimum transparency requirements. It is asking them to publish a set of information that is very similar to the suggestions made by the Court. Moreover, the Commission will report on the operation of the voluntary schemes in April 2017. In this context the Commission will have the opportunity to assess the need to further specify the data to be published by the schemes and to specify the auditing requirements for voluntary schemes in an implementing act.

79

The supervisory power of the Commission regarding the implementation of all the operations was limited by the legislator.

The RED as amended by Directive (EU) 2015/1513 foresees a procedure how the operation of the voluntary schemes is supervised.

The voluntary schemes are obliged to report annually to the Commission about the operation of the scheme.

The Commission in turn reports to the European Parliament and the Council and could also if deemed appropriate to specify the auditing requirements for voluntary schemes in an implementing act. The supervision, however, does not include on site verification checks at the premises of economic operators that are certified by voluntary schemes as the RED places the responsibility to verify the implementation of the scheme rules on the third party audit.

Recommendation 3 (a)

The Commission accepts the recommendation.

It will address the issue in the context of the reporting on the operation of the voluntary schemes as foreseen in the RED as amended by Directive (EU) 2015/1513. The implementation of the scheme procedures by economic operators is verified by independent third party auditors.

Recommendation 3 (b)

The Commission accepts the recommendation that voluntary schemes should have a complaint system and requires this already in the framework of its assessments. However, the Commission considers it necessary to conduct a further assessment before setting out detailed technical requirements of such a complaint system. Such an assessment will be done in the context of the reporting on the operation of the voluntary schemes as foreseen in the RED as amended by Directive (EU) 2015/1513. The first report is due in April 2017.

80

The Commission agrees that Member States shall ensure the quality of the data transmitted.

Recommendation 4

The Commission partially accepts this recommendation and will continue to work with Member States on the reliability of data supplied, as Member States will receive information from economic operators on compliance with the sustainability criteria. Further, Member States provide the Commission with a report on the quality of all data transmitted every five years. However, requiring additional evidence (certificates/declarations) for the purposes of one particular statistical data collection is not justified.

81

The legislator has already taken measures to harmonise the definition of waste in the RED. The RED as amended by Directive (EU) 2015/1513 includes a definition of waste by establishing a link to Directive 2008/98/EC.

The RED as amended by Directive (EU) 2015/1513 foresees indeed a 'grandfathering' clause that allows Member States to count biofuels produced from substances that were determined to be wastes by the competent national authorities and are used in existing installations prior to the adoption of Directive (EU) 2015/1513 towards the national target for advanced renewable fuels. The fuels, however, do not count double against the renewable energy target in transport. In the view of the Commission this legal provision can indeed lead to a situation where some types of biofuels are treated differently in the Member States and this is allowed under the RED within the limits set out therein.

Recommendation 5

The Commission accepts the need to have a harmonisation of definition of waste used for the production of advanced biofuel.

The legislator has already taken measures to harmonise the definition of waste in the RED. The RED as amended by Directive (EU) 2015/1513 includes a definition of waste by establishing a link to Directive 2008/98/EC.

Measures for further harmonisation of the advanced renewable fuels might be considered for the renewable energy policy post 2020.

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Event	Date
Adoption of the Audit Planning Memorandum (APM) / Start of audit	11.3.2015
Official sending of draft report to Commission (or other auditee)	31.3.2016
Adoption of the final report after the adversarial procedure	25.5.2016
Commission's (or other auditee's) official replies received in all languages	22.6.2016

The Member States must ensure that the share of energy from renewable sources in transport in 2020 will be at least 10 % of the final energy consumption in this sector. They can count towards this target biofuels certified as sustainable by voluntary schemes recognised by the Commission.

We conclude that, because of weaknesses in the Commission's recognition procedure and in the subsequent supervision of voluntary schemes, the EU certification system for the sustainability of biofuels is not fully reliable. As regards the achievement of the 10 % transport target, we found that the statistics might be overestimated, because Member States could report as sustainable biofuel whose sustainability was not verified.



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